

OSHA ENFORCEMENT & RECORDKEEPING CONSIDERATIONS FOR COVID-19

ENFORCEMENT – WHAT CAN WE BE CITED FOR?

Given the novelty of the coronavirus, OSHA does not have standards that specifically address COVID-19 as an occupational hazard. OSHA has developed a COVID-19 Guidance Document which only contains non-enforceable recommendations. The recommendations set by OSHA however are typically linked to OSHA requirements that ARE enforceable. Principally, OSHA's "general duty clause" requires employers to furnish employment and a place of employment, which is free from recognized hazards that are causing or are likely to cause death or serious physical harm. 29 U.S.C. 654(s)(1).

OSHA also has confirmed that its Hazard Communication Standard (HCS), which requires employers to classify and communicate risks related to workplace chemical use, applies to COVID-19. For example, employers are required to train employees on the hazards of common chemicals and personal protective equipment for using cleaning and disinfecting chemicals in the workplace.

RECORDKEEPING – DO WE HAVE TO RECORD AN ILLNESS?

If an employee is to test positive for COVID-19 and it was believed to have been contracted at work, it may be considered a recordable injury. Employers must continue to consider traditional OSHA recordkeeping and reporting requirements provided in 29 CFR Part 1904. COVID-19, unlike the common cold and influenza, is not exempt from such requirements.

Qualifying employers must record on their OSHA 300 log cases of COVID-19 amongst their workers if the following three conditions exist:

- 1. It is a confirmed case of COVID-19.**
- 2. The case is work-related, meaning an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.**
- 3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work, etc.).**

OSHA also requires all employers to report any workplace incidents that result in a fatality (within 8 hours) or an in-patient hospitalization (within 24 hours). Only formal admissions to the in-patient service of a hospital or clinic for care or treatment are reportable. There are potential exceptions in 29 CFR 1904.3, so these instances should be reviewed before being reported.

Employers should carefully consider an employee's work duties, environment, and the circumstances surrounding each individual case. There should be fact-specific inquiry for each case to determine whether to record and report. Employers should consider such analysis to be their overarching obligation to make good-faith and non-arbitrary determinations consistent with OSHA requirements.

CONSIDERATIONS - WHAT DOES OSHA RECOMMEND WE DO?

Recognizing the broad scope of the general duty clause and the hazard communication standard, OSHA's COVID-19 Guidance provides a list of recommendations to assist employers in assessing risk and determining appropriate planning, prevention, and control measures in the workplace.

OSHA makes it clear that employers must tailor their COVID-19 policies and preparations to their specific facilities and workforces. Employers must first evaluate the respective risk level their work presents; employers in industries or communities with low risk of exposure must prepare differently than employers with medium, high, or very high risk of exposure of known or suspected sources of COVID-19. OSHA has identified healthcare, death care, laboratory, airline, border protection, and solid waste/wastewater management as industries on the higher end of the risk spectrum.

ACTION - WHAT STEPS SHOULD OUR FACILITY TAKE?

While each employer's actions to address the COVID-19 threat must be tailored to its workplace risk profile, OSHA's COVID-19 Guidance sets forth general measures all employers should implement, as follows:

1. Develop an infectious disease preparedness and response plan.
2. Prepare to implement basic infection prevention measures such as promoting proper hygiene and implementing routine cleaning and disinfection practices.
3. Develop policies and procedures for prompt identification and isolation of sick people, if appropriate.
4. Develop, implement and communicate about flexible workplace controls and protections.
5. Implement workplace controls, to protect against the spread of COVID-19 (i.e. engineering controls, administrative controls, safe work practices to providing personal protective equipment).

Within those broad categories of actions applicable to all employers, OSHA offers some proactive steps employers may take to implement their COVID-19 procedures. For example, if isolating sick employees, most employers need not have special isolation rooms; a designated area behind closed doors may serve that purpose. And, to implement basic infection prevention practices in workplaces that are open to the public, employers should provide tissues, trash receptacles or other hygiene products to customers to minimize exposure to workers.

Other resources for implementing an infection disease preparedness and response plan in coordination with OSHA's recommendations is available on our webpage or by contacting us at covidresponse@uscompliance.com.

Thank you for visiting our COVID-19 Resource Center. We are committed to identifying, developing and updating resources to help the manufacturing community respond to the coronavirus pandemic. If you need more information, please email: covidresponse@uscompliance.com. Thank you for your support and we look forward to working through this challenge together!